

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CLARENCE BROOKS,)
)
)
Petitioner,)
)
)
-vs-) Case No. CIV-13-1236-F
)
)
GARFIELD COUNTY JAIL and)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
)
Respondents.)

ORDER

United States Magistrate Judge Charles B. Goodwin issued a Report and Recommendation on September 26, 2014, recommending that the petition for writ of habeas corpus filed by petitioner, Clarence Brooks, construed as a petition under 28 U.S.C. § 2241, be dismissed without prejudice.

Petitioner has timely objected to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the analysis and recommendation of Magistrate Judge Goodwin. The court finds petitioner's objection to be without merit. Therefore, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

A state prisoner must obtain a certificate of appealability in order to appeal the district court's dismissal of a § 2241 petition. 28 U.S.C. § 2253(c)(1)(A); Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000)(holding that § 2253(c)(1)(A)'s requirements apply when a state habeas petitioner is proceeding under § 2241). When a district court's ruling is based on procedural grounds, a certificate of appealability

will issue only if “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000)(emphasis added). After considering the record in this case, the court concludes that petitioner cannot demonstrate that its procedural ruling is debatable. Thus, the court concludes that a certificate of appealability should be denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Charles B. Goodwin (doc. no. 9) is **ACCEPTED, ADOPTED, and AFFIRMED**. The petition for a writ of habeas corpus filed by petitioner, Clarence Brooks, construed as a petition under 28 U.S.C. § 2241, is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED**.

DATED October 2, 2014.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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